

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ROBERT GADDIE,)	
)	
)	
Petitioner,)	
vs.)	No. 1:16-cv-3179-TWP-TAB
)	
LAURIE JOHNSON, Superintendent,)	
)	
Respondent.)	

**Entry Discussing Petition for Writ of Habeas
Corpus and Denying Certificate of Appealability**

Robert Gaddie has filed a Petition for Writ of Habeas Corpus and a Motion for Leave to Proceed in *Forma Pauperis*. The request to proceed *in forma pauperis* [dkt 2] is **granted**. Because he is proceeding in *forma pauperis*, the Complaint is subject to screening pursuant to statute.

I. Discussion

As an initial matter, the Court determines that the inclusion of the Indiana Department of Correction Commissioner Bruce Lemmon as a co-respondent is improper and is **stricken**.

“Subject-matter jurisdiction is the first question in every case, and if the court concludes that it lacks jurisdiction it must proceed no further.” *State of Illinois v. City of Chicago*, 137 F.3d 474, 478 (7th Cir. 1998). Mr. Gaddie’s writ of habeas corpus pursuant to 28 U.S.C. § 2254(a) fails this test and the action must therefore be **dismissed**.

Gaddie challenges his Marion County conviction for unlawful possession of a firearm by a serious violent felon. He previously filed habeas challenges to this conviction. The first such habeas challenge was docketed as No. 1:03-cv-744-DFH-VSS and was denied on February 3, 2004 based on the determination that the Indiana Court of Appeals provided fair process and engaged in reasoned, good faith decision-making when it determined that the evidence in this case was sufficient finding of guilt. That disposition was “on the merits” for the purpose of triggering the requirements of 28 U.S.C. § 2244(b). (The second habeas challenge was docketed as No. 1:11-cv-1595-JMS-DKL and its disposition for lack of jurisdiction is not relevant to the disposition of the present action.)

Gaddie has now filed another petition for a writ of habeas corpus in which he challenges the same conviction that he challenged in No. 1:03-cv-744-DFH-VSS.

A “prisoner is entitled to one clean shot at establishing his entitlement to relief in a federal habeas corpus proceeding.” *Pavlovsky v. VanNatta*, 431 F.3d 1063, 1064 (7th Cir.2005). When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Potts v. United States*, 210 F.3d 770, 770 (7th Cir. 2000). Thus, “[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.” 28 U.S.C. § 2244(b)(1). Under § 2244(b)(3), this Court has no jurisdiction to hear a second or successive habeas petition without authorization from the Seventh Circuit Court of Appeals. *Burton v. Stewart*, 549 U.S. 147, 152–53 (2007). This statute “creates a ‘gatekeeping’ mechanism for the consideration of second or successive [habeas] applications in the district court,” *Felker v. Turpin*, 518 U.S. 651, 657 (1996).

In the present case, with the prior habeas petition having been adjudicated on the merits, and in the absence of authorization for the present filing from the Court of Appeals, this action must now be dismissed for lack of jurisdiction.

II. Conclusion

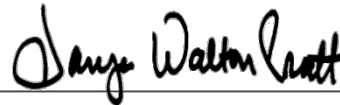
For the reasons stated above, the Petition for Writ of Habeas Corpus is dismissed. Judgment consistent with this Entry shall now issue.

III. Certificate of Appealability

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the *Rules Governing § 2254 Proceedings*, and 28 U.S.C. § 2253(c), the Court finds that the petitioner has failed to show that reasonable jurists would find it “debatable whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court therefore **denies** a certificate of appealability.

IT IS SO ORDERED.

Date: 12/6/2016



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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